THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Writ Petition No.10266 of 2017

Order: **(Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)**

Heard Sri P. Narsimhulu, learned counsel for the petitioner, and Ms. V. Uma Devi, learned Standing Counsel for the respondent-bank. The relief sought for in this writ petition is to declare the action of the 3rd respondent-bank in issuing possession notice dated 14.2.2017 in respect of an extent of 0.66 cents in survey No. 285/B and an extent of 0.37 cents in Gudisabanda Village, Chittoor District, in relation to the petitioner's account, as arbitrary and illegal.

Facts, to the extent necessary, are that the petitioner was given an over-draft facility on hypothecation of stocks. On the ground that no stocks were available, and as the petitioner had defaulted in repayment of the loan, his account was declared a non-performing asset on 29.7.2016. Notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Securitization Act') was issued on 28.10.2016. Proceedings under Section 13(4) were instituted thereafter, and as the mortgaged property continued to remain in the petitioner's possession, proceedings dated 14.2.2017 was issued by the Magistrate under Section 14 of the Securitization Act, pursuant to which the respondent-bank took possession of the property.

The sole contention urged on behalf of the petitioner is that the petitioner was not put on notice before his account was declared as a non-performing asset. Reliance is placed in this regard on Section 13(2) of the Securitization Act to contend that it is only after the borrower is put on notice, and he is afforded an opportunity of being heard, can his account be declared a non-performing asset; and only thereafter can the

bank proceed against the borrower for recovery of the amount due under the provisions of the Securitization Act.

Section 13(2) of the Securitization Act stipulates that where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of the secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as a non-performing asset, then the secured creditor may require the borrower, by notice in writing, to discharge in full his liability to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all, or any of the rights, under sub-section (4).

Section 13(2) stipulates that the secured creditor may require the borrower, by notice in writing, to discharge in full his liability to the secured creditor within 60 days of the notice. The pre-condition for issuing a notice under Section 13(2) is that (1) the borrower must be under a liability to the secured creditor under the security agreement; (2) he should have defaulted in repayment of the secured debt or any instalment thereof; and (3) his account, in respect of such debt, must have been classified by the secured creditor as a non-performing asset. Once these conditions are satisfied, Section 13(2) confers power on the secured creditor to call upon the borrower, by a notice in writing, to pay the amount due within sixty days from the date of the notice issued under Section 13(2). An account is declared as a non-performing asset when the borrower defaults in payment of the debt or of any of its instalments. Section 13(2) does not require the borrower to be put on notice before his account is declared as a non-performing asset. We must express our inability to agree with the learned counsel for the petitioner that the borrower is entitled to be put on notice before his account is declared as a non-performing asset.

Sri P. Narsimhulu, learned counsel for the petitioner, would submit that the respondent be, at least, directed not to take coercive

steps on the petitioner making payment of 20% of the amount immediately, and the balance in easy instalments.

When and how much should be repaid, whether it should be in a lump sum or in instalments, are all matters which this Court would not examine in proceedings under Article 226 of the Constitution of India. Suffice it to make it clear that the order now passed by us shall not preclude the petitioner from either approaching the respondent-bank seeking repayment of the amount in instalments, or to avail their remedy, under Section 17 of the Securitization Act, before the Debts Recovery Tribunal.

Subject to the above observations, the writ petition fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(Dr. SHAMEEM AKTHER, J)

19th April, 2017

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HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
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